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Office Supreme Court, U. S.
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JAN 25 1919

JAMES D. MURPHY

**IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1918.**

No. 685.

**JACOB FROHWERK, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT
IN ERROR.**

MOTION FOR EXTENSION OF TIME FOR ARGUMENT.

Now comes the undersigned counsel for the plaintiff in error, and asks the court to extend the time allotted to the argument and states as reasons in support of this request the following:

This case and also the cases No. 667 and 714 involve the act of June 15, 1917, commonly called and known as the Espionage Act. That there lies at the foundation of this question the power of Congress over Speech and Press, in addition to the questions peculiar to these cases, as raised by the respective records. This counsel, however, has filed an

elaborate brief, discussing from an historical and legal standpoint the question of the power of Congress, in any case whatever, to pass any law on the subject of either Speech or Press. Therein is taken the position that under the original Constitution no power whatever is delegated to Congress to legislate on the subject; nor is the power necessary and proper to any express power.

Further, that the First Amendment is not a limitation of the power of Congress over the subject, but is an express prohibition (through fears then entertained that authority over the subject might be illegally assumed) of the exercise of any power whatever. Counsel suggests that many grave and great questions have heretofore come before the court for final determination, some of which shook the foundations of the Republic. Yet it may be said, with entire truth, that never before, in the entire history of the United States and of this court, has a greater question ever been presented; or one more transcendently important, and destined to exercise a greater influence upon the future of the United States, their institutions, and the enlightened liberty the Constitution was designed to secure.

Counsel deeply regrets that this question is not presented by some one of greater ability, but its importance has called him from his long retirement, and he modestly says that he hopes long years of study have, in some measure, fitted him for this task. To a full presentation it is necessary to cite many historical facts, as well as legal principles, and these cannot be presented in the time allowed by the rule.

For instance, and by way of illustration, who knows at this day, that after the final draft of the Constitution by the Committee on Form, the convention itself resolved that the power of Congress did not extend to the subject of Speech and Press.

Very Respectfully,

JOSEPH D. SHEWALTER.